69TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 617

ADJUSTMENT OF WATER-RIGHT CHARGES

MARCH 22, 1926.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. SMITH, from the Committee on Irrigation and Reclamation, submitted the following

REPORT

[To accompany H. R. 10429]

The Committee on Irrigation and Reclamation, to whom was referred the bill (H. R. 10429) to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, to amend subsections E and F of section 4, act approved December 5, 1924, and for other purposes, after the most careful consideration recommend the passage of the bill as amended.

The bill was prepared under the direction of the Secretary of the Interior and submitted by him to the chairman of the committee for introduction. It is based on a report of the Board of Survey and Adjustments, authorized under the act of December 5, 1924, which report is known as House Document 201, Sixty-ninth Congress, first session. The committee has incorporated in the bill a few items not embraced in the report, to which reference will be made later.

For the benefit of the Members who have not served in a previous Congress it is probably desirable that reference should be made to the reclamation policy of the Government which was adopted as the result of the act of June 7, 1902, known as the reclamation law, which provided that the proceeds from the sales and leases on the public domain should be placed in a special fund for the reclamation of the arid lands. It was necessary, on account of this being a new departure on the part of the Government, to blaze the way in an untried field, as there were no precedents to be followed. A large engineering force was organized and steps taken to locate the various projects to be constructed. There was a great demand for homes on the contemplated projects, and in the enthusiasm which resulted on the part of the settlers and the officials charged with the responsibility of constructing the works, as well as on the part of the Senators and Representatives representing the Western States, proper care was not exercised in the location of

projects, and some of them, because of adverse climatic conditions, poor condition of the soil, the lack of capital on the part of the settlers, and other unexpected difficulties, have not been the success anticipated. It was discovered also that the expense of preparing the land for cultivation, removing the sagebrush and rocks and the leveling of the land, was much greater than expected, and the settlers in most instances found themselves involved in debt, which has greatly hindered their being able to meet their obligations. Congress recognized this situation in 1914 and extended the time within which payment should be made from 10 to 20 years.

The relief afforded under the act of 1914 was not sufficient to place the settlers on firm ground and they became deeper and deeper involved in debt, and the need of additional relief legislation has been apparent for some years. The reclamation policy, however, has been a great success when it is taken into consideration that over 2,000,000 acres of desert land, absolutely worthless, has been reclaimed and the national wealth has been increased to the extent of over $600,000,000, and homes have been established for over 40,000 families. While there has been expended $200,000,000 in the construction of projects, $62,400,000 is represented by repayments.

The reclamation law which provides for the expenditure in the public-land States of the proceeds of the sale of public lands, oil leases, etc., is in line with the policy which was adopted 90 years ago in apportioning to the various States the sum of over $28,000,000 from the proceeds of the sale of public lands as a loan. The States shared in this distribution as follows:

Public-land revenues loaned to the States in 1836

Maine	$955, 838. 25	Maryland	$955, 838. 25
New Hampshire	669, 086. 79	Virginia	2, 198, 427. 99
Vermont	669, 086. 79	North Carolina	1, 433, 757. 39
Massachusetts	1, 338, 173. 58	South Carolina	1, 051, 422. 09
Connecticut	764, 670. 60	Georgia	1, 051, 422. 09
Rhode Island	382, 335. 30	Alabama	669, 086. 79
New York	4, 014, 520. 71	Louisiana	477, 919. 14
Pennsylvania	2, 867, 514. 78	Mississippi	382, 335. 30
New Jersey	764, 670. 60	Tennessee	1, 433, 757. 39
Ohio	2, 007, 260. 34	Kentucky	1, 433, 757. 39
Indiana	860, 254. 44	Missouri	382, 335. 30
Illinois	477, 919. 14	Arkansas	286, 751. 49
Michigan	286, 751. 49		
Delaware	286, 751. 49	Total	28, 101, 644. 91

While the amount was loaned to the States they never have been called upon to repay it, which with interest since 1836 would amount to a hundred times more than the loss to the reclamation fund represented by this bill.

It is needless to refer to the benefits which result not only to those who live on the projects but to all of the States by reason of the fact that a market is created on these projects for goods manufactured in various sections of the country.

While the reclamation law provided for the repayment to the reclamation fund of the amount expended in the construction of the various projects the settlers, for the reasons set forth in the bill and in House Document 201 are unable to do so in full, and it is necessary

to authorize the Secretary of the Interior to credit the projects with losses sustained for the various reasons indicated.

It is confidently believed that with the adjustments authorized herein the various projects will be put on a basis which will restore the morale and enthusiasm of the settlers and enable them to meet their payments promptly in the future. The settlers on these projects have endured great hardships and have struggled against the most adverse conditions in their effort to cooperate with the Government in reclaiming these desert wastes, and are entitled to the proposed relief which has been urged upon the committee by the Representatives from the arid land States and the Secretary of the Interior for many years. The report of the Board of Survey and Adjustments, embodied in House Document 201, represents many months of study on the various projects, as indicated in the following letter from the Secretary of the Interior to the Speaker of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
Washington, January 7, 1926.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

MY DEAR MR. SPEAKER: I transmit herewith a report prepared by a board of survey and adjustments after investigation on the ground. This board was appointed by me in order to carry into effect the provisions of subsection K of section 4 of the second deficiency act, fiscal year 1924 (43 Stat. 702), approved December 5, 1924.

In order to insure that this survey would represent an impartial judgment of conditions, 2 out of 3 of the members who investigated each project had no permanent connection with the department or the Bureau of Reclamation. The chairman of each of these boards was a citizen having no permanent connection with the bureau or direct interest in the project. One member was a citizen of the State and one a representative of the bureau. The signatures attached to the report show that it is unanimous, or practically so.

A perusal of the report shows that on 19 of the 23 projects water users requested hearings, and that their requests have been considered in a generous spirit, which has taken into account not only the physical and other obstacles which have interfered with the success of home makers on these areas, but also the depression in agriculture which has so greatly reduced farm incomes during recent years.

The fact that the relief recommended is above the estimates contained in the fact finders' report, which led to this survey, should not operate against its favorable consideration by Congress. It is regarded as desirable that all grievances and sources of loss enumerated in subsection K be disposed of at this time. If this is done, the obligations assumed by water users on these projects should hereafter be discharged in full.

I regret that I am unable to approve of some of the recommendations, because it is believed they are not within the scope of their authorization under subsection K, or they introduce principles which would render future development so hazardous and uncertain as to destroy or seriously interfere with the administrative success of the reclamation act. These exceptions are more important as to principles than as to the money involved, and they will be explained if such explanation is desired by you.

A form of bill or bills designed to carry out those recommendations in which the department concurs is in course of preparation, and in reporting thereon recommendations as required by said subsection K will be made.

It is a pleasure to bear testimony to the conscientious spirit in which the members of the board connected with these investigations and the preparation of this report performed their arduous and difficult duties.

Very truly yours,

HUBERT WORK.

The items which have been inserted by the committee, not embraced in this document, are referred to in the letter from the Secretary of the Interior hereto attached and made a part of this report. There

is also submitted other correspondence bearing on the various items mentioned in the bill.

DEPARTMENT OF THE INTERIOR,
Washington, March 19, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: In reply to your letter requesting my views on H. R. 10429, "To adjust water-right charges," etc., I have to advise as follows:

So far as the bill follows and includes the recommendations of the Federal board of survey and adjustments, approved by this department in various reports to your committee, and as to general provisions incorporated therein on the recommendation of the department, the bill has my approval.

I note, however, that there is included in the bill a proposal to charge off operation and maintenance deficits occurring prior to date of the so-called reclamation extension act of 1914 on a number of projects, involving substantial amounts of money expended by the Government out of the reclamation fund for this purpose. This introduces a new policy not recommended by this department, and may constitute an undesirable precedent for other projects heretofore or hereafter authorized to be constructed by Congress. I, therefore, doubt the advisability of such action, but will of course be governed by the conclusion of Congress in the matter.

I note also that there has been included on page 4 of the bill a charge off for the Carlsbad project, New Mexico. The department has heretofore recommended the charge off of $164,383.62, with interest, being moneys expended for the acquisition of certain flowage rights, but it was recommended that that be made the subject of a separate bill, because not included within the recommendation of the board of surveys and adjustments. The bill also proposes to charge off some $210,502 in connection with additional storage in Lake McMillan Reservoir, which amount, so far as I can find, has not been recommended by the department, and which I am not at this time prepared to recommend.

For the foregoing reasons, it seems to me that the entire matter, as it relates to the Carlsbad project, should be included in a separate measure.

Section 16 of the bill, page 10, provides that nothing in the act shall be held to affect or prejudice the claims of the Klamath irrigation district or the State of Oregon in any suit or action now or hereafter to be instituted to set aside certain contracts. I find nothing in the bill that would affect any such suits should they be authorized, but desire to point out that bills proposing to authorize the suits have been introduced, but have not yet been acted upon, either by the committees or by Congress. It seems to me that this section has no place in H. R. 10429.

On pages 19 and 20 is a provision (b) authorizing the Secretary to credit the El Paso County Water Improvement District No. 1 with $350,000, or so much as the district may spend in the construction of certain works to protect its water supply. While this may be a very desirable piece of work, it was not included within the recommendation of the board of survey and adjustments, and apparently is not germane to the purpose of H. R. 10429.

I recommend early consideration of and action upon the bill, because the portions thereof heretofore recommended are of importance, and should be put into effect at an early date.

Very truly yours,

HUBERT WORK, *Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, February 6, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of January 29, 1926, transmitting for report H. R. 8540, entitled "A bill to adjust water-right charges and grant other relief upon the Bellefourche irrigation project in South Dakota."

This bill is based upon recommendations made by the board of survey and adjustments in its report of december 19, 1925, House Document No. 201,

Sixty-ninth Congress, first session. Following the recommendations of the board as shown on pages 13 and 14 of document 201, the bill provides that charges to the extent of $734,618 be suspended, and charges to the extent of $544,521 be deducted from the total cost of the project. With the suspension of the charges as named and the elimination from the project of lands permanently unproductive because of their steep and rough topography I am in agreement, but exception is taken to two of the items placed by the board in the definite loss column on page 14 of the report. These are 1,300 acres used for right of way representing $57,070 shown at the top of page 14 under "Permanently unproductive," and $119,606 representing operation and maintenance deficit prior to the reclamation extension act on page 14 under the heading "Error or mistake."

As to the right of way matter, it has been the rule on all projects except one to include in the farm unit, which forms the basis for construction charges, all irrigable area except that occupied as right of way by main canals, larger laterals and drains. If these are now deducted on the Bellefourche project, similar action should be taken on other projects. This would decrease the irrigable area and increase the per acre charge, which could not be done without the consent of the landowner whose charges would be increased. It would be difficult to readjust all water-right contracts to make this allowance for land in rights of way and roads to the proper individual at this time, as in many cases the original owner has sold his land and moved away. The practice the board recommends would also result in continual changes in irrigable area as new drains are constructed and new roads are opened at frequent intervals.

The deficit of $119,606 represents the excess of operation and maintenance cost over accruals during the years 1908–1914 inclusive, when due to an endeavor to aid in the establishment of irrigation on a limited area the charges were made as light as possible with the expectation that when more land was in cultivation the cost per acre would be reduced and the losses of these early years recouped. Experience gained has demonstated the need for some provision to take care of similar contingencies and during the later years provision has been made in the construction charge for such losses under the item of operation and maintenance during construction. It is an expense that must be met in some way by all project developments. The two items discussed, or a total of $176,676, should, I believe, be omitted and the definite loss would then stand as $367,845.

In order that the recommendation of the board regarding the suspension feature may be fully understood, paragraph 2, page 10 of the report for convenient reference is quoted as follows:

"Lands now incapable of the profitable production of crops, but possibly susceptible of reclamation for profitable agriculture, by tillage or drainage, shall be recommended for suspension from all construction payments, but to receive water for irrigation purposes as other project lands, at the usual operation and maintenance charges until a competent body shall in the future declare them possessed of productive power and thereby place them in a paying class, or permanently productive. The use of water on these lands is imperative if they are to be reclaimed. Moreover, since they are seldom in a compact area, but scattered among project lands, water may be delivered to them through works that will otherwise be in use. On these lands small incomes may be won to supplement the productive farm units. Thus, also, the acre cost of operation and maintenance may be reduced."

Should lands be permanently eliminated from the project area and the charges against them remitted, there would be no authority for the delivery of water to such lands and no possibility of their being restored to productivity. The permanent elimination of these lands from the project no doubt would affect the value of them and it is doubtful whether such elimination could be made over the objection of the landowners. It is conceivable that some landowners might object to such elimination. I believe the bill should make the elimination contingent upon agrement of the landowner or limit the elimination to those lands delinquent in the payment of water-right charges, which renders the water-right contract subject to cancellation. Section 2 of H. R. 8540 (section 7 of suggested substitute) I believe will enable this to be worked out. It is noted with approval that section 2 would authorize the granting of relief provided for in subsection F of the act of December 5, 1924, without requiring said project to take over the care, operation, and maintenance of the project works. The financial condition of this project is such as to preclude turning over the works at this time and the requirement should therefore be waived.

The bill merely provides that the sum named shall be deducted from the amount to be paid by settlers. A portion of this amount represents construction charges

already paid by landowners on areas to be eliminated. The bill does not expressly provide that the charges so paid shall be returned to the water users. It appears from paragraph 1 on page 10 of the report under the heading "Lack of fertility in soils" that this was contemplated by the board, though no definite recommendation is made whether the return should be in cash or by way of credits to be allowed on future charges. It may possibly be that in some cases all of the irrigable area of a water user is eliminated, in which case cash return would seem to be the only alternative. In many cases payments were made by former owners who have sold the land and whose whereabouts is now unknown. To return the charges to the particular individual by whom payments were made would be impracticable and in many cases impossible. Presumably the board intended that the reduction should inure to the benefit of the present landowners or contract holders.

Attention should also be called to the rehabilitation feature as contained in paragraph 2, section 1, of the proposed bill. Full details on this subject were worked out and embodied in a tentative draft of bill covering the Bellefourche and lower Yellowstone projects and the Fort Laramie division of the North Platte project, which draft was transmitted to you with the approval of the department by Doctor Mead's letter of January 25, 1926. Should it be considered desirable, the provisions of the draft referred to might be added to the present bill, but the department has no objection to the manner in which the subject is treated in the present bill.

So far as possible the bill should, in definite and unequivocal terms, state the adjustment to be made and the manner of making it in order to avert controversies in interpreting and administering the law, and to that end I recommend that the following be substituted for H. R. 8540:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior be, and he is hereby, empowered and directed to make, under subsection K, act of December 5, 1924 (43 Stat. 701), in connection with the Bellefourche irrigation project, South Dakota, adjustment of water-right charges standing upon the records of said project as of June 30, 1925, as follows: There shall be deducted from the total cost of said project the following sums: (1) $355,809, or such an amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands: (a) 1,208 acres permanently unproductive because of topography steep and rough. Past eliminations: (b) 6,897 acres permanently unproductive because of topography steep and rough. Present land classification: All as shown by classification heretofore made under the supervision of the board of survey and adjustments, as shown in the table on page 14 of House Document No. 201, Sixty-ninth Congress, first session, subject to checking and modification as recommended in "General recommendations" Nos. 2 and 4, on page 60 of said document. (2) $12,036 on account of error or mistake representing Johnson Creek lateral storage investigations and Nine Mile location surveys, as shown on page 14 of said Document 201.

"SEC. 2. All lands found by the classification to be permanently unproductive shall be excluded from the project and no water shall be delivered to them after the date of such exclusion. The water right formerly appurtenant to such permanently unproductive lands shall revert to the United States and be considered as a separate resource to be disposed of by the United States under the reclamation law in any manner found by the Secretary of the Interior to be feasible.

"SEC. 3. The construction charges heretofore paid on permanently unproductive lands excluded from the project shall be applied as a credit on charges due or to become due on any remaining irrigable land covered by the same water-right contract or land taken in exchange as provided in section 6 of this act. If the charges so paid exceed the amount of all water-right charges due and unpaid, plus the construction charges not yet due, the balance shall be paid in cash to the present owner of the land so excluded, or to the irrigation district affected, which in turn shall be charged with the responsibility of making suitable adjustment with the landowners involved. Should all of the irrigable lands of a water-right applicant be excluded from the project as permanently unproductive, and no exchange be made as provided in section 6 hereof, the total construction charges theretofore paid less any accrued and unpaid charges on account of operation and maintenance shall be refunded in cash, the water-right contract shall be canceled, and all liens on account of water charges shall be released.

"SEC. 4. All payments upon construction charges shall be suspended against the following lands: (a) 10,500 acres temporarily unproductive for lack of fertility in the soil, seepage, and excessive alkali salts; (b) 6,895 acres temporarily

unproductive (Willow Creek lands awaiting further developments), common feature costs, and Willow Creek developments; all as shown by classification heretofore made under the supervision of the board of survey and adjustments and shown in the table on page 14 of said Document No. 201, checked and modified as outlined in "General recommendations" Nos. 2 and 4, page 60 of said document.

"SEC. 5. The payment of all construction charges against said areas temporarily unproductive shall remain suspended until the Secretary of the Interior, or some competent board to be appointed by him, whose findings shall be subject to his approval, shall declare them to be possessed of productive power and thereby properly to be placed in a paying class, where upon payment of construction charges against such areas shall be resumed. While said lands are so classified as temporarily unproductive and the construction charges against them are suspended, water for irrigation purposes may be furnished upon payment of the usual operation and maintenance charges or such charges as may be fixed by the Secretary of the Interior, the advance payment of which may be required in the discretion of said Secretary. Should said lands temporarily classed as unproductive or any of them in the future, be found by the Secretary of the Interior in the manner aforesaid to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands.

"SEC. 6. Settlers who have unpatented entries under any of the public land laws embracing lands which have been eliminated from the project, or whose entries have been so reduced that the remaining area is insufficient to support a family, shall be entitled to exchange their entries for other lands within the Belle Fourche project or any other Federal reclamation project, with credit for residence, improvement, and cultivation made or performed by them upon their original entries and with credit upon the new entry for any construction charges paid upon or in connection with the original entry, provided that when satisfactory proof has been made on the original entry it shall not be necessary to submit final proof upon the lieu entry. Any entryman whose entry or farm unit is reduced by the elimination of permanently unproductive land shall be entitled to enter an equal amount of available public land on the same project contiguous to or in the vicinity of the farm unit so reduced by elimination, with all credits in this section hereinbefore specified. Owners of private lands so eliminated from the project may, subject to the approval of the Secretary of the Interior and free of all encumbrances, relinquish and convey to the United States lands so owned and held by them, not exceeding an area of 160 acres, and select an equal area of vacant public land within the irrigable area of the Belle Fourche or any other Federal reclamation project, with credit upon the construction costs of the lands selected to the extent and in the amount paid upon or in connection with their original relinquished lands. The Secretary of the Interior is authorized to issue patents for the selected lands without requirement of residence, improvement, and cultivation thereon. The Secretary of the Interior is hereby authorized to revise and consolidate farm units, so far as this may be made necessary or advisable, with a view to carrying out the provisions of this section.

"SEC. 7. The Secretary of the Interior is hereby directed to amend any existing water-right contract in any manner that may be necessary to carry out the purposes of this act upon the request of the holder of such contract and to grant the relief provided for in subsection F of the act of December 5, 1924, without requiring said project to take over the care, operation, and maintenance of the project works. The Secretary of the Interior, as a condition precedent to the amendment of any existing water-right contract may, when in his judgment the conditions warrant, require the execution of a contract by a water users' association or irrigation district whereby such association or irrigation district shall be required to pay to the United States, without regard to default in the payment of charges against any individual farm unit or tract of irrigable land, the entire charges against all productive lands remaining in the project after the permanently unproductive lands shall have been eliminated and the charges against temporarily unproductive areas shall have been suspended in the manner and to the extent authorized and directed by this act.

"SEC. 8. The Secretary of the Interior is hereby empowered and directed to do any and all things necessary to give full effect to the provisions of this act and to grant such other and further relief and to perform any and all acts as may be

necessary to rehabilitate said project and put it upon a sound operative basis with a view to insuring its future success."

I recommend the favorable consideration of the bill proposed as a substitute for H. R. 8540.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, March 1, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 19, 1926, transmitting with request for report copy of bill H. R. 9467, entitled "A bill for the adjustment of water-right charges on the Boise irrigation project, Idaho, and for other purposes."

The bill is based upon recommendations made by the board of survey and adjustments in its report of December 19, 1925, House Document 201, Sixty-ninth Congress, first session, and, except for the features discussed below, the proposed bill is satisfactory to the department.

In the event that any of the temporarily unproductive lands be later found to be permanently unproductive, it is desirable that authority be given to handle such a situation without further recourse to Congress, and accordingly it is suggested that the following be added to section 3, page 3, of the proposed bill:

"Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior, in the manner aforesaid, to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands."

In order that there may be no doubt as to the administration of the law regarding the lieu-selection feature, it is suggested that the following be inserted after the word "lands" in line 5, page 4, of the proposed bill:

"The Secretary of the Interior is authorized to issue patents for the selected lands without requirement of residence, improvement, and cultivation thereof."

Subject to the suggestions made above, I recommend favorable consideration of H. R. 9467.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, March 6, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have duly received your letter of February 27 inclosing with request for report, copy of H. R. 9600, entitled "A bill for the adjustment of water-right and construction charges on the Carlsbad irrigation project, N. Mex., and for other purposes."

This bill is identical with S. 3232, upon which report has been made this date to the Senate Committee on Irrigation and Reclamation. A copy of this report is herewith transmitted for the information of your committee.

Very truly yours,

HUBERT WORK.

MARCH 6, 1926.

Hon. CHAS. L. MCNARY,
Chairman Committee on Irrigation and Reclamation,
United States Senate.

MY DEAR SENATOR MCNARY: I have duly received your letter of February 24 inclosing with request for report, copies of two bills, S. 3231, entitled "A bill for the adjustment of water-right charges on the Carlsbad irrigation project, New Mexico, and for other purposes," and S. 3232 entitled "A bill for the adjustment of water-right and construction charges on the Carlsbad irrigation project, New Mexico, and for other purposes."

The bills have to do with the same project, and being interrelated will be dealt with jointly following the manner of your request.

S. 3231 empowers and directs the Secretary of the Interior to make, under subsection K, section 4, act of December 5, 1924, in connection with the Carlsbad project, New Mexico, adjustment of water-right charges now standing upon the records of said project as follows:

"The sum of $148,316.48, charged against the project on account of expenses incurred in removing settlers, paying for land and improvements, and cost of instituting and maintaining condemnation proceedings, all due to filings made with the Government's permission upon land that had been previously turned to the Government for the Lake McMillan reservoir site."

The bill is indefinite and uncertain in that it does not provide the disposition to be made of the sum mentioned. Presumably it is intended that the sum named shall be charged off as a definite loss to the reclamation fund in the manner recommended by the board of survey and adjustments as to some of the projects in their report dated December 19, 1925, House Document 201, Sixty-ninth Congress, first session. However, the report of this board furnishes no basis for the provisions of the bill, as will be seen from an examination of the report, pages 16 and 17. The board recommends that charges aggregating $45,867 be temporarily suspended and accounted a probable loss to the reclamation fund. This recommendation, however, relates to a matter in nowise connected with the subject matter of the bill. This is the only definite recommendation made in connection with the Carlsbad project.

It is assumed that the bill is designed to relieve the project water users of the payment of the sum of $148,316.48, representing funds disbursed by the United States in connection with condemnation proceedings for the acquisition of flowage rights required for the McMillan reservoir by reason of its increase in capacity and the consequent flooding of additional lands with improvements on them. The records show that $164,383.62 marks the aggregate expended by the United States for payment of compensation to landowners, with incidental expense of suit and otherwise. This amount is charged to the project to be refunded by the water users under their present water-right contracts.

The claim of the water users for the adjustment sought, if properly understood, is based upon two grounds as follows:

First. That the entry of the lands abutting upon the reservoir should not have been allowed by the United States;

Second. That the compensation paid for the lands in question was excessive.

Speaking to the first ground: The Carlsbad project was a private enterprise the construction of which was initiated about 1889, the McMillan reservoir being completed on or about the year 1894. The private company constructing the project filed with the Secretary of the Interior a map seeking right of way for the reservoir under the act of March 3, 1891 (26 Stat., 1095–1101). This map was finally approved granting right of way for the reservoir described. Some years later floods partially destroyed this reservoir and other property of the company, which finding itself in dire financial difficulties, induced the United States to purchase the project with a view to its reconstruction and operation under the reclamation law. The purchase was made on or about December 6, 1905. The purchase price was $150,000.

January 23, 1906, the lands surrounding McMillan reservoir were withdrawn from all forms of entry under section 3 of the reclamation act of June 17, 1902. (32 Stat. 388.)

During the interval elapsing between the time the map was approved showing right of way for the McMillan reservoir and the withdrawal of the abutting lands on January 23, 1906, many entries were made of the adjacent lands subject to the flowage rights of the reservoir acquired in the manner and to the extent stated.

In 1912 it was found necessary to increase the capacity of the reservoir by raising the dam and spillway 3 feet in elevation. This resulted in submerging lands in addition to those covered by the right of way approved to the private company, as before described. It was in payment for the additional lands thus flooded, with the improvements on them, that the sum mentioned in the bill was expended. The specific claim of the water users is that the lands surrounding the reservoir should have been withdrawn by the Bureau of Reclamation when investigations looking to the purchase of the project were first initiated, about 1903 or 1904, and that in addition the Land Office should not have permitted the entries of lands abutting upon the reservoir after the filing or approval of the private company's right-of-way application affecting some of the lands in question.

Protests were made by officials of the company against the allowance of entries covering lands around the reservoir. The Land Office officials contend, however, that there was no authority of law to reject applications for entry, which were accordingly allowed subject to the flowage rights of the reservoir. However, had the lands been withdrawn under the reclamation act in 1903 or 1904, the payment of the greater part of the amount later required for additional flowage rights might have been avoided.

Dealing with the second ground, i. e., that the compensation paid for the flowage rights was excessive: The average price paid for the lands approximated $40 an acre. A large portion of the lands had or claimed water rights from artesian wells. Some of the lands were cultivated and had been improved with buildings, fences, etc. Others were unimproved with appurtenant water rights, and still others were unimproved with no water rights but located within the so-called artesian belt, which gave them a certain value as potentially irrigable by artesian wells. Under the law compensation must be made on the basis of the market value at the time of appropriation, which occurred in 1912. The suits were not tried until 1917 and 1918. The market value of the lands in 1912 unfortunately was high because of a land boom then in existence, and great demand for land in that locality. Development of the artesian basin in this area had occurred but a short time before, and this served to stimulate the market value. This boom soon subsided, however, and in 1917 and 1918 when the cases were tried the lands in question had a very low market value. Subsequent events show that the inflated values of 1912 were unwarranted because of the partial failure of the artesian wells, the cost of sinking and operating them, and for other reasons. The court, however, held, and properly so under the law, that the values in 1912, when the lands were appropriated, must control. These and similar lands in the locality were actually selling for prices the same as or higher than those fixed by the court and jury. Appraisements were made first by commissioners, from whose decisions appeals were taken and trials de novo were had before juries whose verdicts in some cases increased the awards of the commissioners and in others reduced them, the net result, however, being that on the average increased awards were secured upon appeal.

The conclusion is that although the prices paid for the land were high measured in terms of value at the time of trial and subsequently they were not disproportionate to the market value of these and similar lands at the time of their appropriation. The United States was required to pay interest on the awards for some six years or more—from the time of appropriation to the date of payment. This aggregated some $40,000. The payment of this interest might have been obviated had the flowage rights been acquired prior to the flooding of the lands, which should have been done. It is also believed that this would have resulted in a lower appraisement because of the better evidence then obtainable and the lower market value during 1910 and 1911, when the lands should have been acquired.

S. 3232: This bill also is open to the objection that it is indefinite and uncertain in the same way as S. 3231. It provides for adjustment of what are referred to as water right and construction charges now standing upon the records of the project as follows:

"Water right and construction charges unaccrued December 31, 1925, $830,864, on account of inadequate and insufficient storage facilities and the failure of the Reclamation Bureau to supply adequate and sufficient water for the lands within said project."

It is impossible from the bill to ascertain precisely what is contemplated. Presumably the intention is that the sum of $830,864 shall be charged off as a definite loss to the reclamation fund, though this is only a surmise. It may be the intention that these charges shall be suspended until an adequate water supply is furnished for the irrigation of project lands. This conclusion, however, seems to be negatived by section 3 of the bill, which provides for the transfer of all project works to the Pecos Water Users' Association "and the encumbrances, liens, mortgages now resting upon said project shall stand as fully paid and canceled." Presumably this latter refers to liens upon lands of the water users for payment of charges due the United States.

The sum mentioned represents substantially the unpaid balance due the United States for the purchase and construction of project works. It does not represent construction costs of storage works which have proven partially or wholly inadequate, and so far as can be ascertained it bears no direct relation to such storage works. The total cost of the project as of December 31, 1925, is $1,425,182.75, of which $555,643.69 have been paid, leaving a balance unpaid of $868,539.06.

This cost covers the purchase and construction of all project works including McMillan and Avalon Reservoirs, canals, laterals, drainage work, and miscellaneous features. The total cost of McMillan Reservoir is $395,747.40.

During the last few years there has been at times a shortage of water, attributable for the most part to the leaky condition of McMillan Reservoir. The leakage permits a large portion of the water stored to escape, some of which is caught in the Avalon Reservoir situated immediately below. When the Avalon Reservoir, having a capacity of some 6,000 or 7,000 acre-feet is full, the remainder of the water escaping by leakage from McMillan is lost during the nonirrigation season when it can not be diverted and applied directly to the land. However, during the last few years, despite the shortage of water, at times, fairly good crop returns have been secured as will be noted from the following:

Average value of crops per acre:		Average value of crops per acre— Continued.	
1919	$106.04	1923	$78.70
1920	47.75	1924	97.10
1921	42.53	1925	62.69
1922	53.41		

The board of survey and adjustments submits no recommendation concerning a charge-off on account of inadequate water supply, as will be seen from an examination of their report, pages 16 and 17. From the recommendation of the board the following is quoted:

"Lake McMillan, constructed for a capacity of 45,000 acre-feet of water, is underlain by gypsum beds. This gypsum dissolved by the action of the stored waters, has caused a large number of sink holes, through which large quantities of water are lost. Investigations indicate that a considerable part of this leakage is not recovered for use in the system, consequently this reservoir can not be relied upon for definite or permanent storage, with the result that annually a severe water shortage occurs. It does, however, serve for temporary and auxiliary storage."

"The board recommends the immediate investigation of additional reservoir sites, and, if found physically and economically feasible, a suitable contract be made with the Pecos Water Users' Association for reservoir construction, with funds to be appropriated by Congress from the reclamation fund, the cost of said construction to be added to the present unpaid construction cost.

"* * * With ample water supply this project can and will meet all construction repayments."

Investigations have been heretofore made looking to the supplying of additional storage facilities and the department has stood and now stands ready to construct the necessary additional facilities if suitable arrangement can be made with the water users and the necessary funds are appropriated by Congress. Some difference of opinion and uncertainty have developed regarding the proper site for an additional reservoir required for this purpose, two alternative sites having been considered. Before anything definite in this respect can be done satisfactory adjustment must be made and understanding reached.

At the present time I can not approve bill S. 3232. It is not justified by any recommendation of the board of survey and adjustments and is not worked out on the same basis as recommendations made by that board on other projects. Admitting that there is an inadequate water supply, present and prospective, it does not necessarily follow that all charges remaining unpaid should be remitted. There was no guaranty by the United States of a complete water supply or that the McMillan Reservoir—not constructed originally by the United States but purchased along with the other property of the project as before described—would be perfect or adequate after reconstruction. It has always leaked, and, despite repeated efforts to prevent and correct such leakages, they have continued and increased. It now appears that the additional storage required must be supplied from some other source or that the area of the project must be reduced to correspond to the water supply. The entire abandonment of McMillan Reservoir does not appear necessary or desirable. Should the entire cost of this reservoir be eliminated, the amount of the charge-off would be only $395,747.40. The Avalon Reservoir can continue to be used and the canals, laterals, and drainage works utilized. There has been made no convincing showing that the lands of the project can not bear the additional cost of storage necessary to be supplied. If such a showing be made, then the only alternative seems to be to reduce the irrigable area of the project and charge off as a definite loss to the reclamation fund the cost assessed against the areas eliminated in the

manner recommended by the board of survey and adjustments on other projects. I do not feel that so radical a departure from the procedure followed on other projects can be justified.

Bills 3231 and 3232 constitute in part a duplication, the latter embracing the charges included in the former.

For the reasons stated I recommend the favorable consideration of S. 3231 carrying the amount of $164,383.62, the total cost of rights of way, with incidental expenses, and the unfavorable consideration of S. 3232.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, February 11, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 3, transmitting with request for report, copy of H. R. 8461, entitled "A bill for the adjustment of water-right charges on the Huntley project, Montana, and for other purposes."

The bill is based upon the report of the board of survey and adjustments dated December 19, 1925, House Document 201, Sixty-ninth Congress, first session.

In order that the board's recommendations concerning suspended charges may be understood, paragraph 2, page 10 of the report, for convenient reference, is quoted as follows:

"Lands now incapable of the profitable production of crops, but possibly susceptible of reclamation for profitable agriculture, by tillage or drainage, shall be recommended for suspension from all construction payments, but to receive water for irrigation purposes as other project lands, at the usual operation and maintenance charges until a competent body shall in the future declare them possessed of productive power and thereby place them in a paying class, or permanently unproductive. The use of water on these lands is imperative if they are to be reclaimed. Moreover, since they are seldom in a compact area, but scattered among project lands, water may be delivered to them through works that will otherwise be in use. On these lands small incomes may be won to supplement the productive farm units. Thus, also, the acre cost of operation and maintenance may be reduced."

A portion of the amount which the board recommends be charged off as a definite loss to the reclamation fund represents construction charges already paid by landowners on areas to be eliminated. It appears from paragraph 1 on page 10 of the report under the heading "Lack of fertility in soils," that the board contemplates return to the water users of construction charges already paid under eliminated areas, though no definite recommendation is made whether the return should be in cash or by way of credits to be allowed on future charges. It may be possible that in some cases all of the irrigable area of a water user is eliminated, in which case return in cash would seem to be the only alternative. In many cases payments were made by former owners who have sold the land and whose whereabouts are now unknown. To return the charges to the particular individual by whom payments were made would be impracticable, and in many cases impossible. Presumably the board intended that the reduction should inure to the benefit of the present landowners or contract holders.

It is possible that before this bill is passed and adjustments made under it, dealings may be conducted through the medium of an irrigation district. For this reason it is believed provision should be made as a matter of safety for refunds and adjustments to be made by the district or to be participated in by the district should conditions require. Appropriate provision is incorporated in the draft of bill hereinafter proposed as a substitute for H. R. 8461.

I am unable to approve the recommendation of the board and the provision in the bill for charging off certain deficits created in operation and maintenance costs, for the following reason: This deficit represents the excess of operation and maintenance cost over accruals during the years 1908 to 1914, inclusive, when due to an endeavor to aid in the establishment of irrigation on a limited area the charges were made as light as possible, with the expectation that when more land was in cultivation the cost per acre would be reduced, and the losses of these early years recouped. Experience gained has demonstrated the need for some provision to take care of similar contingencies, and during the later years

provision has been made in the construction charge for such losses, under the item of operation and maintenance during construction. It is an expense that must be met in some way by all project developments. To remit these charges would establish a troublesome precedent and encourage demands for action by Congress in future similar cases.

So far as possible the bill should, in definite and unequivocal terms, state the adjustment to be made and the manner of making it in order to avoid controversies in the interpretation and administration of the law. To the end that the bill may be definite I recommend that the following be substituted for H. R. 8461:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior be, and he is hereby, empowered and directed to make, under subsection K, act of December 5, 1924 (43 Stat. L. p. 701), in connection with the Huntley project, Montana, constructed and operated under the act of Congress approved June 17, 1902 (32 Stat. L. p. 388), and acts amendatory thereof or supplementary thereto, adjustment of water-right charges standing upon the records of said project as of June 30, 1925, as follows: There shall be deducted from the total cost of said project the following sum: (1) $46,987, or such amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands: (a) 404 acres permanently unproductive because eroded and marginal to the river (Pryor division); (b) 427 acres permanently unproductive for lack of fertility in the soil (Eastern and Fly Creek divisions); all as shown by classification heretofore made under the supervision of the board of survey and adjustments as shown in the table on page 21 of House Document 201, Sixty-ninth Congress, first session, subject to checking and modification as recommended in "General recommendations" Nos. 2 and 4 on page 60 of said Document 201.

"The Secretary is further directed to assume as a definite loss such sums as in his judgment may be just and proper in connection with moneys expended for experiments with reclamation on alkali lands, and costs in excess of contracted returns, such total not to exceed $41,000.

"SEC. 2. All lands found by the classification to be permanently unproductive shall be excluded from the project, and no water shall be delivered to them after the date of such exclusion. The water right formerly appurtenant to such permanently unproductive lands shall revert to the United States and be considered as a separate resource to be disposed of by the United States under the reclamation law in any manner found by the Secretary of the Interior to be feasible.

"SEC. 3. The construction charges heretofore paid on permanently unproductive lands excluded from the project shall be applied as a credit on charges due or to become due on any remaining irrigable land covered by the same water-right contract. If the charges so paid exceed the amount of all water-right charges due and unpaid, plus the construction charges not yet due, the balance shall be paid in cash to the present owner of the land so excluded or to the irrigation district affected, which in turn shall be charged with the responsibility of making suitable adjustment with the landowners involved. Should all the irrigable lands of a water-right applicant be excluded from the project as permanently unproductive, the total construction charges theretofore paid, less any accrued charges on account of operation and maintenance charges, shall be refunded in cash, the water-right contract shall be canceled in the case of an individual contract, and all liens on account of water-right charges shall be released.

"SEC. 4. All payments upon construction charges shall be suspended against the following lands: (*a*) 11,170 acres temporarily unproductive—gumbo and alkali soils (Pryor division); (*b*) 1,336 acres temporarily unproductive—private lands unpledged (Pryor division); (*c*) 970 acres temporarily unproductive—seeped; all as shown by classification heretofore made under the supervision of the board of survey and adjustments and as shown in the table on page 21 of said document 201, checked and modified as outlined in "General recommendations" Nos. 2 and 4, page 60 of said document.

"SEC. 5. The payment of all construction charges against said areas temporarily unproductive shall remain suspended until the Secretary of the Interior, or some competent board to be appointed by him, who findings shall be subject to his approval, shall declare them to be possessed of sufficient productive power properly to be placed in a paying class, whereupon payment of construction charges against such areas shall be resumed. While said lands are so classified as temporarily unproductive and the construction charges against them are suspended, water for irrigation purposes may be furnished upon payment of the usual operation and maintenance charges, or such other charges as may be fixed

by the Secretary of the Interior, the advance payment of which may be required, in the discretion of the said Secretary. Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior, in the manner aforesaid, to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands.

"SEC. 6. Settlers who have unpatented entries under any of the public land laws embracing lands which have been eliminated from the project, or whose entries have been so reduced that the remaining area is insufficient to support a family, shall be entitled to exchange their entries for other lands within the Huntley project or any other Federal reclamation project, with credit for residence, improvement and cultivation made or performed by them upon their original entries and with credit upon the new entry for any construction charges paid upon or in connection with the original entry. Any entryman whose entry or farm unit is reduced by the elimination of permanently unproductive land shall be entitled to enter an equal amount of available public land on the same project contiguous to or in the vicinity of the farm unit so reduced by elimination, with all credits in this section hereinbefore specified. Owners of private lands so eliminated from the project may, subject to the approval of the Secretary of the Interior, and free of all encumbrances, relinquish and convey to the United States lands so owned and held by them, not exceeding an area of 160 acres, and select an equal area of vacant public land within the irrigable area of the Huntley or any other Federal reclamation project, with credit upon the construction costs of the lands selected to the extent and in the amount paid upon or in connection with their original relinquished lands. The Secretary of the Interior is authorized to issue patents for the selected lands without requirement of residence, improvement and cultivation thereon. The Secretary of the Interior is hereby authorized to revise and consolidate farm units, so far as this may be made necessary or advisable, with a view to carrying out the provisions of this section.

"SEC. 7. The Secretary of the Interior is hereby directed to amend any existing water-right contract in any manner that may be necessary to carry out the purposes of this act, upon request of the holder of such contract. The Secretary of the Interior, as a condition precedent to the amendment of any existing water-right contract may, when in his judgment the conditions warrant, require the execution of a contract by a water users' association or irrigation district whereby such association or irrigation district shall be required to pay to the United States, without regard to default in the payment of charges against any individual farm unit or tract of irrigable land, the entire charges against all productive lands remaining in the project after the permanently unproductive lands shall have been eliminated and the charges against temporarily unproductive areas shall have been suspended in the manner and to the extent authorized and directed by this act.

"SEC. 8. The Secretary of the Interior is hereby empowered and directed to do any and all things necessary to give full effect to the provisions of this act."

I recommend the favorable consideration of the bill proposed as a substitute for H. R. 8461.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, March 1, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 19, 1926, transmitting with request for report copy of H. R. 9468 entitled "A bill for the adjustment of water-right charges on the King Hill irrigation project, Idaho, and for other purposes."

The bill is based upon recommendations made by the board of survey and adjustments in its report of December 19, 1925, House Document 201, Sixty-ninth Congress, first session, and except for the features discussed below is satisfactory to the department.

The amount stated in line 2, page 2 of the bill, that is, $818,982, should be changed to read $531,958. The sum named in the bill is arrived at by adding

the probable and definite losses, and this is clearly not the intention of the board. The following should be added after the word "excluded" on line 8, page 3 of the bill, "or to the irrigation district affected, which in turn shall be charged with the responsibility of making suitable adjustment with the landowners involved." It may be that at the present time no irrigation district would be involved in the event of repayment, but it is not unlikely that an irrigation district later may become concerned in this feature, and it seems therefore desirable that authority be given to carry out any repayment made through the medium of an irrigation district.

In the event that any of the temporarily unproductive lands be later found to be permanently unproductive, it is desirable that authority be given to handle such a situation without further recourse to Congress, and accordingly it is suggested that the following be added to section 5, page 4 of the proposed bill:

"Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior, in the manner aforesaid to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands."

In order that there may be no doubt as to the administration of the law regarding the lieu selection feature, it is suggested that the following be inserted after the word "lands" in line 20, page 5 of the proposed bill: "The Secretary of the Interior is authorized to issue patents for the selected lands without requirement of residence, improvement and cultivation thereof."

Subject to the suggestions made above, I recommend favorable consideration of H. R. 9468.

Very truly yours.

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, March 1, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 19, 1926, transmitting with request for report copy of H. R. 9466, entitled "A bill for the adjustment of water-right charges on the Minidoka irrigation project, Idaho, and for other purposes."

The bill is based upon recommendations made by the board of survey and adjustments in its report of December 19, 1925, House Document 201, Sixty-ninth Congress, first session, and except for the features discussed below, the proposed bill is satisfactory to the department.

The amount stated in line 1, page 2, of the bill—that is, $141,949—should be changed to $9,172, as the latter amount is the sum named by the board on page 33 of Document 201 as the total definite loss. The sum of $141,959 is arrived at by adding the probable and the definite losses, and it seems clear that it was not the intention of the board that this total be treated as a definite loss. The following should be added after the word "excluded" on line 7, page 3, of the bill, "or to the irrigation district affected, which in turn shall be charged with the responsibility of making suitable adjustment with the landowners involved." It may be that at the present time no irrigation district would be involved in the event of repayment, but it is not unlikely that an irrigation district later may become concerned in this feature, and it seems therefore desirable that authority be given to carry out any repayment made through the medium of an irrigation district.

In the event that any of the temporarily unproductive lands be later found to be permanently unproductive, it is desirable that authority be given to handle such a situation without further recourse to Congress, and accordingly it is suggested that the following be added to section 5, page 4, of the proposed bill:

"Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior, in the manner aforesaid, to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands."

In order that there may be no doubt as to the administration of the law regarding the lieu selection feature, it is suggested that the following be inserted after the word "lands" in line 20, page 5, of the proposed bill:

"The Secretary of the Interior is authorized to issue patents for the selected lands without requirement of residence, improvement, and cultivation thereof."

Subject to the suggestions made above, I recommend favorable consideration of H. R. 9466.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, February 12, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 3 transmitting, with request for report, copy of H. R. 8458, entitled "A bill for the adjustment of water-right charges on the Lower Yellowstone irrigation project, Montana, and for other purposes."

The bill is based upon the report of the board of survey and adjustments dated December 19, 1925, House Document 201, Sixty-ninth Congress, first session.

In order that the board's recommendations concerning suspended charges may be understood, paragraph 2, page 10, of the report, for convenient reference, is quoted, as follows:

"Lands now incapable of the profitable production of crops, but possibly susceptible of reclamation for profitable agriculture by tillage or drainage shall be recommended for suspension from all construction payments, but to receive water for irrigation purposes as other project lands at the usual operation and maintenance charges until a competent body shall in the future declare them possessed of productive power and thereby place them in a paying class or permanently unproductive. The use of water on these lands is imperative if they are to be reclaimed. Moreover, since they are seldom in a compact area, but scattered among project lands, water may be delivered to them through works that will otherwise be in use. On these lands small incomes may be won to supplement the productive farm units. Thus, also, the acre cost of operation and maintenance may be reduced."

A portion of the amount which the board recommends be charged off as a definite loss to the reclamation fund represents construction charges already paid by landowners on areas to be eliminated. It appears from paragraph 1 on page 10 of the report, under the heading "Lack of fertility in soils," that the board contemplates return to the water users of construction charges already paid under eliminated areas, though no definite recommendation is made whether the return should be in cash or by way of credits to be allowed on future charges. It may be possible that in some cases all of the irrigable area of a water user is eliminated, in which case return in cash would seem to be the only alternative. In many cases payments were made by former owners who have sold the land and whose whereabouts is now unknown. To return the charges to the particular individual by whom payments were made would be impracticable and in many cases impossible. Presumably the board intended that the reduction should inure to the benefit of the present landowners or contract holders.

On this project contracts have been made between the United States and irrigation districts for the repayment of project investments. The United States deals with the districts, which in turn collect charges from the landowners in accordance with the benefits received and levies and assessments made on account thereof under the State law. It seems proper and necessary therefore that any refund or adjustment of charges which may be authorized be carried out through the medium of the irrigation districts. The bill should be drawn accordingly. Provision for this is made in section 3 of proposed substituted bill hereinafter appearing in this report.

So far as possible the bill should, in definite and unequivocal terms, state the adjustment to be made and the manner of making it in order to avoid controversies in the interpretation and administration of the law. To the end that the bill may be definite I recommend that the following be substituted for H. R. 8458:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior be, and he is hereby, empowered and directed to make, under subsection K, act of December 5, 1924 (43 Stat. L. p. 701), in connection with the Lower Yellowstone project,

Montana-North Dakota, constructed and operated under the act of Congress approved June 17, 1902 (32 Stat. L. p. 388), and acts amendatory thereof or supplementary thereto, adjustment of water-right charges standing upon the records of said project as of June 30, 1925, as follows:

There shall be deducted from the total cost of said project the following sum: (1) $40,727, or such amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands: (a) 574 acres permanently unproductive on account of right of way Great Northern Railway, proceeds of, less sales price; (b) 788 acres permanently unproductive, townsites; all as shown by classification heretofore made under the supervision of the board of survey and adjustments as shown in the table on page 28 of House Document 201, Sixty-ninth Congress, first session, subject to checking and modification as recommended in "General recommendations" Nos. 2 and 4 on page 60 of said Document 201.

"The following additional adjustment shall be made: Spread the cost of the dam and main canal over the 66,000 acres of originally estimated area, and assume as a definite loss the charges corresponding to the approximately 6,077 acres of difference between said 66,000 acres and the approximately 59,923 acres now included in the project, amounting to approximately $341,527.

"SEC. 2. All lands found by the classification to be permanently unproductive shall be excluded from the project, and no water shall be delivered to them after the date of such exclusion. The water right formerly appurtenant to such permanently unproductive lands shall revert to the United States and be considered as a separate resource to be disposed of by the United States under the reclamation law in any manner found by the Secretary of the Interior to be feasible.

"SEC. 3. The construction charges heretofore paid on permanently unproductive lands excluded from the project shall be applied as a credit on charges due or to become due on any remaining irrigable land covered by the same water-right contract. If the charges so paid exceed the amount of all water-right charges due and unpaid, plus the construction charges not yet due, the balance shall be paid in cash to the present owner of the land so excluded or to the irrigation district affected, which in turn shall be charged with the responsibility of making suitable adjustment with the landowners involved. Should all the irrigable lands of a water-right applicant be excluded from the project as permanently unproductive, the total construction charges theretofore paid, less any accrued charges on account of operation and maintenance charges, shall be refunded in cash, the water-right contract shall be canceled in the case of an individual contract, and all liens on account of water-right charges shall be released.

SEC. 4. All payments upon construction charges shall be suspended against the following lands: (a) 500 acres temporarily unproductive—damaged by erosion; (b) 2,800 acres temporarily unproductive because water-logged; (c) 7,188 acres temporarily unproductive, forest covering and miscellaneous; (d) 313 acres temporarily unproductive because located in United States reserves; all as shown by classification heretofore made under the supervision of the board of survey and adjustments and as shown in the table on page 28 of said Document 201, checked and modified as outlined in "General recommendations" Nos. 2 and 4, page 60 of said document.

"SEC. 5. The payment of all construction charges against said areas temporarily unproductive shall remain suspended until the Secretary of the Interior, or some competent board to be appointed by him, whose findings shall be subject to his approval, shall declare them to be possessed of sufficient productive power properly to be placed in a paying class, whereupon payment of construction charges against such areas shall be resumed. While said lands are so classified as temporarily unproductive and the construction charges against them are suspended, water for irrigation purposes may be furnished upon payment of the usual operation and maintenance charges, or such other charges as may be fixed by the Secretary of the Interior, the advance payment of which may be required, in the discretion of the said Secretary. Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior, in the manner aforesaid, to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands.

"SEC. 6. Settlers who have unpatented entries under any of the public land laws embracing lands which have been eliminated from the project, or whose

entries have been so reduced that the remaining area is insufficient to support a family, shall be entitled to exchange their entries for other lands within the Lower Yellowstone project, or any other Federal reclamation project, with credit for residence, improvement, and cultivation made or performed by them upon their original entries and with credit upon the new entry for any construction charges paid upon or in connection with the original entry. Any entryman whose entry or farm unit is reduced by the elimination of permanently unproductive land shall be entitled to enter an equal amount of available public land on the same project contiguous to or in the vicinity of the farm unit so reduced by elimination, with all credits in this section hereinbefore specified. Owners of private lands so eliminated from the project may, subject to the approval of the Secretary of the Interior, and free of all encumbrances, relinquish and convey to the United States lands so owned and held by them, not exceeding an area of 160 acres, and select an equal area of vacant public land within the irrigable area of the Lower Yellowstone or any other Federal reclamation project, with credit upon the construction costs of the lands selected to the extent and in the amount paid upon or in connection with their original relinquished lands. The Secretary of the Interior is authorized to issue patents for the selected lands without requirement of residence, improvement, and cultivation thereon. The Secretary of the Interior is hereby authorized to revise and consolidate farm units, so far as this may be made necessary or advisable, with a view to carrying out the provisions of this section.

"SEC. 7. The Secretary of the Interior is hereby directed to amend any existing water-right contract in any manner that may be necessary to carry out the purposes of this act, upon request of the holder of such contract. The Secretary of the Interior, as a condition precedent to the amendment of any existing water-right contract may, when in his judgment the conditions warrant, require the execution of a contract by a water users' association or irrigation district whereby such association or irrigation district shall be required to pay to the United States without regard to default in the payment of charges against any individual farm unit or tract of irrigable land, the entire charges against all productive lands remaining in the project after the permanently unproductive lands shall have been eliminated and the charges against temporarily unproductive areas shall have been suspended in the manner and to the extent authorized and directed by this act.

"SEC. 8. The Secretary of the Interior is hereby empowered and directed to do any and all things necessary to give full effect to the provisions of this act."

I recommend the favorable consideration of the bill proposed as a substitute for H. R. 8458.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, February 11, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 3, 1926, transmitting for report H. R. 8460, "A bill for the adjustment of water-right charges on the Milk River irrigation project, Montana, and for other purposes."

This bill is based upon recommendations made by the board of survey and adjustments in its report of December 19, 1925, House Document No. 201, Sixty-ninth Congress, first session. Following the recommendations of the board as shown on page 31 of Document 201, the bill provides that charges to the extent of $1,878,656 be suspended, and charges to the extent of $1,946,189 be deducted from the total cost of the project. The bill does not recite the figure $1,946,189, but the items enumerated in the bill would total this amount. With the suspension of the charges as named and the elimination from the project of lands permanently unproductive and the deduction of $145,054 charged in error or mistake, I am in agreement, but exception is taken to three of the items placed by the board in the definite loss column on page 31 of report. These are the $929,212 for major works unused, $735,945 for major and minor works unused, and $35,000 for damage from floods.

The reason assigned for the two large eliminations is that the project was planned and works built to irrigate 219,557 acres, and that out of this only 105,000 acres are irrigable. There is a misconception in this. Works have not

been built to irrigate 219,557 acres. To do this would require a very large additional expenditure for storage, canal enlargement, additional canals, and laterals. It is believed that works for the areas enumerated hereafter will be required and that payment for these in the sums named below should be required:

Major works unused, 75,854 acres, at $12.25	$929,212
Minor works unused, 12,900 acres, at $57.05	735,945

The item of $35,000 for damage from floods is an expenditure incurred in repairing canals damaged by floods during an operating period of over 15 years. If this is to be deducted, it amounts in effect to requiring the United States to build works at cost and then insure their perpetual operation without any payment therefor. No agreement or promise of such insurance was ever made or expected. It is a proper part of maintenance cost required in all irrigation systems and should not be eliminated. The items discussed, or a total of $1,700,157, should, I believe, be omitted, and the definite loss would then stand as $246,032.

In order that the recommendation of the board regarding the suspension feature may be fully understood, paragraph 2, page 10 of the report for convenient reference is quoted, as follows:

"Lands now incapable of the profitable production of crops, but possibly susceptible of reclamation for profitable agriculture, by tillage or drainage, shall be recommended for suspension from all construction payments, but to receive water for irrigation purposes as other project lands, at the usual operation and maintenance charges until a competent body shall in the future declare them possessed of productive power and thereby place them in a paying class, or permanently productive. The use of water on these lands is imperative if they are to be reclaimed. Moreover, since they are seldom in a compact area, but scattered among project lands, water may be delivered to them through works that will otherwise be in use. On these lands small incomes may be won to supplement the productive farm units. Thus, also, the acre cost of operation and maintenance may be reduced."

On the Milk River project the construction charges have not been as yet announced and no construction payments have been made. Apparently the recommendation of the board will be followed (with the omissions discussed above) if the sum of $240,032 be eliminated from the project cost, and if 32,930 acres of temporarily unproductive land, representing an amount of $1,878,656, be continued in a state of suspension and not assessed when the construction charges are announced for the productive lands of the project.

So far as possible the bill should, in definite and unequivocal terms, state the adjustment to be made and the manner of making it in order to avert controversies in interpreting and administering the law. To that end I recommend that the following be substituted for H. R. 8460:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior be, and he is hereby, empowered and directed to make, under subsection K, act of December 5, 1924 (43 Stat. L., p. 701), in connection with the Milk River irrigation project Montana, adjustments in the construction cost standing upon the records of said project as of June 30, 1925, as follows: There shall be deducted from the total cost of said project the following sums: (1) $100,978, or such an amount as represents the construction costs as found by the Secretary of the Interior against the following lands: (a) 1,770 acres permanently unproductive for lack of fertility in the soil, all as shown by classification heretofore made under the supervision of the board of survey and adjustments as shown in the table on page 31 of House Document No. 201, Sixty-ninth Congress, first session, subject to checking and modification as recommended in "General recommendations" Nos. 2 and 4 on page 60 of said document; (2) $145,054 on account of error or mistake, representing unused St. Mary East Canal and measuring St. Mary waters as shown on page 31 of said Document 201.

"SEC. 2. All lands found by the classification to be permanently unproductive shall be excluded from the project and no water shall be delivered to them after the date of such exclusion. The water right which otherwise would have become appurtenant to such permanently unproductive land shall remain the property of the United States and be considered as a separate resource to be disposed of by the United States under the reclamation law in any manner found by the Secretary of the Interior to be feasible.

"SEC. 3. When the construction charges are announced for the productive lands of the project all payments of construction charges shall be suspended against the following lands: (a) 23,500 acres temporarily unproductive for lack

of fertility in the soil; (b) 9,430 acres temporarily unproductive because of inadequate storage and refractory soils; all as shown by classification heretofore made under the supervision of the board of survey and adjustments and shown in the table on page 31 of said Document 201, checked and modified as outlined in "General recommendations" Nos. 2 and 4, page 60 of said document.

"SEC. 4. The payment of all construction charges against said areas temporarily unproductive shall remain suspended until the Secretary of the Interior, or some competent board to be appointed by him, whose findings shall be subject to his approval, shall declare them to be possessed of productive power and thereby properly to be placed in a paying class, whereupon payment of construction charges against such areas shall begin. While said lands are so classified as temporarily unproductive and the construction charges against them are suspended, water for irrigation purposes may be furnished upon payment of the usual operation and maintenance charges or such charges as may be fixed by the Secretary of the Interior, the advance payment of which may be required in the discretion of said Secretary. Should said lands temporarily classed as unproductive or any of them in the future, be found by the Secretary of the Interior in the manner aforesaid to be permanently inproductive, such charges as would otherwise be assessed against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands.

"SEC. 5. Settlers who have unpatented entries under any of the public land laws embracing lands which have been eliminated from the project, or whose entries have been so reduced that the remaining area is insufficient to support a family, shall be entitled to exchange their entries for other lands within the Milk River project or any other Federal reclamation project, with credit for residence, improvement and cultivation made or performed by them upon their original entries, provided that when satisfactory proof has been made on the original entry it shall not be necessary to submit final proof upon the lieu entry. Any entryman whose entry or farm unit is reduced by the elimination of permanently unproductive land shall be entitled to enter an equal amount of available public land on the same project contiguous to or in the vicinity of the farm unit so reduced by elimination, with all credits in this section hereinbefore specified. Owners of private lands so eliminated from the project may, subject to the approval of the Secretary of the Interior and free of all encumbrances, relinquish, and convey to the United States lands so owned and held by them, not exceeding an area of 160 acres, and select an equal area of vacant public land within the irrigable area of the Milk River or any other Federal reclamation project. The Secretary of the Interior is authorized to issue patents for the selected lands without requirement of residence, improvement and cultivation thereon. The Secretary of the Interior is hereby authorized to revise and consolidate farm units, so far as this may be made necessary or advisable, with a view to carrying out the provisions of this section.

"Sec. 6. The Secretary of the Interior is hereby directed to amend any existing contract on the Milk River project in any manner that may be necessary to carry out the purposes of this act, upon request of the holder of such contract. The Secretary of the Interior, as a condition precedent to the amendment of any such existing contract may, when in his judgment the conditions warrant, require the execution of a contract by a water users' association or irrigation district whereby such association or irrigation district shall be required to pay to the United States, without regard to default in the payment of charges against any individual farm unit or tract, of irrigable land the entire charges against all productive lands remaining in the project after the permanently unproductive lands shall have been eliminated and the charges against temporarily unproductive areas shall have been suspended in the manner and to the extent authorized and directed by this act.

"SEC. 7. The Secretary of the Interior is hereby empowered and directed to do any and all things necessary to give full effect to the provisions of this act."

I recommend the favorable consideration of the bill proposed as a substitute for H. R. 8460.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of March 9, 1926, transmitting, with request for report, copy of H. R. 10086, relative to adjustment of charges on the Newlands project.

The bill follows in some respects form of measure suggested in report of January 28 on S. 2340, but departs from that outline in certain important respects.

The so-called omnibus bill (H. R. 9880) makes provision for deduction and suspensions in the Newlands project under and pursuant to the recommendation of the board of survey and adjustments, and in my judgment the provisions of that bill are suited to the requirements and conditions of the Newlands project, as well as the other projects treated therein.

I do not deem it advisable at this time to depart from those recommendations or to recommend the additional features contained in H. R. 10086. I therefore am unable to approve the latter bill.

Very truly yours,

HUBERT WORK, *Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, February 27, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 19, 1926, transmitting with request for report copy of H. R. 9507, "A bill for the adjustment of water-right charges on the Okanogan irrigation project, Washington, and for other purposes."

The bill is based upon the report of the board of survey and adjustments dated December 19, 1925, House Document 201, Sixty-ninth Congress, first session, and except for the feature discussed below is satisfactory to the department.

The exception referred to is the item on page 2 of the bill, line 22, and described as "(g) Sandy land water rights, $65,045." The water users bought these water rights from abandoned farms and transferred the water to their present areas. The United States advanced the funds to pay for the water rights and the district has by contract agreed to repay the United States. The water is worth the cost, as many of the growers of orchards secure from $200 to $300 and upward per acre for crops produced. Some say they can pay $40 per acre each year for water. They now have the water represented thereby and should pay the cost.

In furtherance of an agreement reached at the recent conference between your committee and officials of the Bureau of Reclamation, there has been prepared, and will be shortly submitted, an omnibus bill carrying the relief recommended by the board of survey and adjustments upon all the reclamation projects, and the items for the Okanogan project will be included in the consolidated bill. However, to the end that your records may be complete, the above report is submitted upon the individual bill for this project.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, March 11, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of March 8, transmitting copy of amendments proposed to be introduced to H. R. 9880, entitled "A bill to adjust water-right charges, to grant other relief on the Federal irrigation projects, to amend subsections E and F of section 4, act approved December 5, 1924, and for other purposes," affecting the Rio Grande project.

Because of the threatened water shortage and the difficulty of diverting water from the Rio Grande for the irrigation of lands in the Texas portion of the project,

it is highly important that additional investigations be made and certain construction work done at the earliest possible date. In order to expedite this matter the El Paso County water improvement district No. 1 has offered to advance the funds necessary for the work in question, the funds so to be advanced and expended to be credited by the United States on the present contract obligations of that district. The district is under the necessity of borrowing the funds necessary for this purpose. The course proposed would obviate the necessity of appropriations by Congress of funds to be repaid many years hence, and evinces a laudable willingness on the part of the district to cooperate in evolving a solution of the very difficult and serious problem with which the project is confronted.

The amendment further provides that there shall be borne from the General Treasury one-seventh of the total cost of operating and maintaining the Elephant Butte Reservoir and for the delivery of water to Mexico under the existing treaty with that Republic. The amount thus to be borne from the General Treasury is fixed for the calendar years 1925 and 1926 at $15,000 per annum, making a total of $30,000 for those years. This is the figure which has been adopted as representing as nearly as may be determined the proportionate part of the actual cost for those years properly to be paid from the General Treasury. The amounts for future years are not fixed further than that one-seventh of the total cost, whatever it may be, shall be defrayed from the General Treasury.

These matters were presented in detail at the hearings held by the committee some days ago.

The matters embodied in the amendments are not covered by recommendations of the board of survey and adjustments. H. R. 9880 is designed to carry out the recommendations of the board, and in my judgment it is inadvisable to incorporate in the omnibus bill items not covered by the report of the board in question.

Because of international features of the project, treaty relations with Mexico and other complications, I can see no objection to the last amendment proposed, which authorizes the project to take advantage of the provisions of the act of December 5, 1924, without taking over the operation and maintenance of the project.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, February 26, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 17, transmitting, with request for report, copy of H. R. 9175, entitled "A bill for the adjustment of water-right charges on the Shoshone irrigation project, Wyo., and for other purposes."

This bill is identical with S. 3009, upon which a favorable report was submitted February 12, 1926. I accordingly recommend the favorable consideration of the bill.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, February 11, 1926.

Hon. ADDISON T. SMITH,
Chairman Committee on Irrigation and Reclamation,
House of Representatives.

MY DEAR MR. SMITH: I have your letter of February 3 transmitting, with request for report, copy of H. R. 8459, entitled "A bill for the adjustment of water-right charges on the Sun River project, Montana, and for other purposes."

The bill is based upon the report of the board of survey and adjustments dated December 19, 1925, House Document No. 201, Sixty-ninth Congress, first session. The bill, however, does not in all respects follow the recommendations of the board, as will be seen by comparison with the table shown on page 49 of said Document 201. The board recommends that charges to the extent of $131,940 be suspended and accounted a probable loss, and that charges in the sum of

$125,531 be charged off as a definite loss to the reclamation fund. The bill provides that charges aggregating $887,898 (possibly intended to be $87,198) be suspended and $79,649 be assumed as a definite loss, corresponding to the area permanently unproductive. In addition, provision is made for accepting as a loss the operation and maintenance deficit incurred from 1908 to 1914 in an amount not stated in the bill, but shown in the board's report to be $34,148.

In order that the board's recommendations concerning suspended charges may be understood, paragraph 2, page 10 of the report, for convenient reference, is quoted, as follows:

"Lands now incapable of the profitable production of crops, but possibly susceptible of reclamation for profitable agriculture, by tillage or drainage, shall be recommended for suspension from all construction payments, but to receive water for irrigation purposes as other project lands, at the usual operation and maintenance charges until a competent body shall in the future declare them possessed of productive power and thereby place them in a paying class, or permanently unproductive. The use of water on these lands is imperative if they are to be reclaimed. Moreover, since they are seldom in a compact area, but scattered among project lands, water may be delivered to them through works that will otherwise be in use. On these lands small incomes may be won to supplement the productive farm units. Thus, also, the acre cost of operation and maintenance may be reduced."

A portion of the amount which the board recommends be charged off as a definite loss to the reclamation fund represents construction charges already paid by landowners on areas to be eliminated. It appears from paragraph 1 on page 10 of the report, under the heading "Lack of fertility in soils," that the board contemplates return to the water users of construction charges already paid under eliminated areas, though no definite recommendation is made whether the return should be in cash or by way of credits to be allowed on future charges. It may be possible that in some cases all of the irrigable area of a water user is eliminated, in which case return in cash would seem to be the only alternative. In many cases payments were made by former owners who have sold the land and whose whereabouts are now unknown. To return the charges to the particular individual by whom payments were made would be impracticable, and in many cases impossible. Presumably the board intended that the reduction should inure to the benefit of the present landowners or contract holders.

It may be possible that before the bill is passed and adjustments are made under it dealings will be conducted through the medium of an irrigation district. Should this happen, provision should be made in the bill by which the district can make with the individuals such adjustments as may be required. Provision has been made for this in section 3 of the proposed substituted bill hereinafter set forth.

I am unable to approve the recommendation of the board and the provision of the bill for charging off the deficit in operation and maintenance for the following reasons: This deficit represents the excess of operation and maintenance cost over accruals during the years 1908 to 1914 inclusive, when due to an endeavor to aid in the establishment of irrigation on a limited area the charges were made as light as possible, with the expectation that when more land was in cultivation the cost per acre would be reduced and the losses of these early years recouped. Experience gained has demonstrated the need for some provision to take care of similar contingencies, and during the later years provision has been made in the construction charge for such losses under the item of operation and maintenance during construction. It is an expense that must be met in some way by all project developments. To remit these charges would establish a troublesome precedent and encourage demands for action by Congress in future similar cases.

The bill provides that the Secretary of the Interior shall allocate as a charge against different divisions of the Sun River project such portion of the cost of Willow Creek Reservoir as may seem proper and just to the Secretary. This provision appears to unnecessary, as the Secretary now has authority to do this.

So far as possible the bill should, in definite and unequivocal terms, state the adjustment to be made and the manner of making it in order to avoid controversies in the interpretation and administration of the law. To the end that the bill may be definite I recommend that the following be substituted for H. R. 8459:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior be, and he hereby is, empowered and directed to make, under subsection K, act of December 5, 1924 (43d Stat. L. p. 701), in connection with the Sun River project, Montana,

constructed and operated under the act of Congress approved June 17, 1902 (32d Stat. L. p. 388), and acts amendatory thereof or supplementary thereto, adjustment of water-right charges standing upon the records of said project as of June 30, 1925, as follows:

"There shall be deducted from the total cost of said project the following sums: (1) $79,649, or such amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands: (a) 962 acres permanently unproductive for lack of fertility in the soil, nonirrigable and nonarable (Fort Shaw division); (b) 105 acres permanently unproductive because inaccessible by erosion and floods; (c) 1,233 acres permanently unproductive because flooded and eroded; (2) $11,734 because of error or mistake—adjustment losses; all as shown by classification heretofore made under the supervision of the board of survey and adjustments as shown in the table on page 49 of House Document 201, Sixty-ninth Congress, first session, subject to checking and modification as recommended in "General recommendations" Nos. 2 and 4, on page 60 of said Document 201.

"SEC. 2. All lands found by the classification to be permanently unproductive shall be excluded from the project, and no water shall be delivered to them after the date of such exclusion. The water right formerly appurtenant to such permanently unproductive lands shall revert to the United States and be considered as a separate resource to be disposed of by the United States under the reclamation law in any manner found by the Secretary of the Interior to be feasible.

"SEC. 3. The construction charges heretofore paid on permanently unproductive lands excluded from the project shall be applied as a credit on charges due or to become due on any remaining irrigable land covered by the same water-right contract. If the charges so paid exceed the amount of all water-right charges due and unpaid, plus the construction charges not yet due, the balance shall be paid in cash to the present owner of the land so excluded or to the irrigation district affected, which in turn shall be charged with the responsibility of making suitable adjustment with the landowners involved. Should all the irrigable lands of a water-right applicant be exlcuded from the project as permanently unproductive, the total construction charges theretofore paid, less any accrued charges on account of operation and maintenance charges, shall be refunded in cash, the water-right contract shall be canceled in the case of an individual contract, and all liens on account of water-right charges shall be released.

"SEC. 4. All payments upon construction charges shall be suspended against the following lands: (a) 2,518 acres temporarily unproductive—subscribed—water-logged (Fort Shaw division); (b) 1,292 acres temporarily unproductive—unentered and unsubscribed (Fort Shaw division); all as shown by classification heretofore made under the supervision of the board of survey and adjustments and as shown in the table on page 49 of said Document 201, checked and modified as outlined in 'General recommendations' Nos. 2 and 4, page 60 of said document.

"SEC. 5. The payment of all construction charges against said areas temporarily unproductive shall remain suspended until the Secretary of the Interior, or some competent board to be appointed by him, whose findings shall be subject to his approval, shall declare them to be possessed of sufficient productive power properly to be placed in a paying class, whereupon payment of construction charges against such areas shall be resumed. While said lands are so classified as temporarily unproductive and the construction charges against them are suspended, water for irrigation purposes may be furnished upon payment of the usual operation and maintenance charges, or such other charges as may be fixed by the Secretary of the Interior, the advance payment of which may be required, in the discretion of the said Secretary. Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior, in the manner aforesaid, to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands.

"SEC. 6. Settlers who have unpatented entries under any of the public land laws embracing lands which have been eliminated from the project, or whose entries have been so reduced that the remaining area is insufficient to support a family, shall be entitled to exchange their entries for other lands within the Sun River project or any other Federal reclamation project, with credit for residence, improvement and cultivation made or performed by them upon their original entries and with credit upon the new entry for any construction charges paid upon or in connection with the original entry. Any entryman whose entry

or farm unit is reduced by the elimination of permanently-unproductive land shall be entitled to enter an equal amount of available public land on the same project contiguous to or in the vicinity of the farm unit so reduced by elimination, with all credits in this section hereinbefore specified. Owners of private lands so eliminated from the project may, subject to the approval of the Secretary of the Interior, and free of all encumbrances, relinquish and convey to the United States lands so owned and held by them not exceeding an area of one hundred and sixty acres, and select an equal area of vacant public land within the irrigable area of the Sun River or any other Federal reclamation project, with credit upon the construction costs of the lands selected to the extent and in the amount paid upon or in connection with their original relinquished lands. The Secretary of the Interior is authorized to issue patents for the selected lands without requirement of residence, improvement and cultivation thereon. The Secretary of the Interior is hereby authorized to revise and consolidate farm units, so far as this may be made necessary or advisable, with a view to carrying out the provisions of this section.

"SEC. 7. The Secretary of the Interior is hereby directed to amend any existing water-right contract in any manner that may be necessary to carry out the purposes of this act, upon request of the holder of such contract. The Secretary of the Interior, as a condition precedent to the amendment of any existing water-right contract may, when in his judgment the conditions warrant, require the execution of a contract by a water users' association or irrigation district whereby such association or irrigation district shall be required to pay to the United States, without regard to default in the payment of charges against any individual farm unit or tract of irrigable land, the entire charges against all productive lands remaining in the project after the permanently unproductive lands shall have been eliminated and the charges against temporarily unproductive areas shall have been suspended in the manner and to the extent authorized and directed by this act.

"SEC. 8. The Secretary of the Interior is hereby empowered and directed to do any and all things necessary to give full effect to the provisions of this act."

I recommend the favorable consideration of the bill proposed as a substitute for H. R. 8459.

Very truly yours,

HUBERT WORK,

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